CWP No.259 of 2006.

9.5.2006 Present: Mr.M.S. Chandel, Advocate General with Mr.J.K. Verma, Deputy Advocate General for the petitioners.

Mr.Tarlok Chauhan, Advocate, for respondents.

Heard Mr.Chandel, learned Advocate General, appearing for the petitioners and Mr.Chauhan, learned counsel appearing for the respondents.

In O.A. 3556 of 2003 the Tribunal passed an order on 11th December, 2003 directing Secretary(Health) to treat the O.A. as a representation and to decide the same. Before this O.A. was filed, the respondents were serving in the Zonal Hospital, Una, but by the order impugned in this O.A. they were transferred to Sarkaghat in Mandi District. It was this transfer order which the respondents had challenged in this O.A. which as noticed at the outset was directed to be treated as a representation.

Secretary(Health), Government of Himachal Pradesh passed an order on 21st May, 2004 rejecting the representation and at the same time for additional reasons which he assigned in this order he ordered transfer of the respondents to Community Health Centre, Bangana. This order was challenged by the respondents in O.A.2218 of 2005. Vide the impugned judgment dated 5th December, 2005, the

Tribunal has allowed this O.A. and has set aside the aforesaid impugned order as also the impugned transfer orders (Annexures A-7 and A-8 with O.A.) and directed that status quo as it existed before passing of the impugned order Annexure A-7 be restored.

We have seen the impugned order dated 21st May, 2004 passed by the Secretary (Health). It does appear to us that this order offends the very basic edifice of service jurisprudence inasmuch as the Secretary (Health) has not only cast a stigma upon the respondents, but also has, on the very face of the order, directed their transfer as a punitive measure. This order thus on the face of it appears to be unconstitutional.

This petition, therefore, has no merit because in our considered opinion the learned Tribunal by correctly applying and appreciating all the facts and circumstances of the case has passed the aforesaid impugned judgment which calls for no interference by us.

The petition is dismissed.

We do wish to clarify that in this writ petition the only issue which came up for our consideration related to the transfer orders qua the respondents and the manner in which the Secretary (Health) in the order dated 21st May, 2004 illegally and unconstitutionally dealt with the representation of the respondents. We have not in

this petition at all gone into the merits of any other controversy with respect to the behaviour of the respondents and their conduct, including their acts of omission or commission, if any. We are making these observations because we leave it open to the State Government, to initiate action, if such an action under the facts and circumstances indeed is warranted and the State Government is so advised. Actually the Tribunal also in the concluding part of the judgment dated 5th December, 2005 has made identical and similar observations.

(V.K. Gupta), CJ.

May 9, 2006 (Deepak Gupta),J.
(D)

CWP No.419 of 2004

9.5.2006 Present: Mr Ajay Kumar, Advocate, for the petitioner.

Mr M S Chandel, Advocate General, with Mr J K Verma, Deputy Advocate General, for respondents No.1,2 and 5.

Mr S Dogra, Advocate, for respondent No.3

Mr Vinay Kuthiala, Advocate, for respondents No.6 and 7.

CWP No.624 of 2005

Mr Ajay Kumar, Advocate, for the petitioner.

Mr M S Chandel, Advocate General, with Mr J K Verma, Deputy Advocate General, for respondents No.1 and 2.

Mr R L Sood, Senior Advocate, with Mr B C Negi, Advocate, and Ms. Shilpa Sood, Advocate, for respondents No.3 to 6.

Mr Sandeep Kaushik, Advocate, for the applicant.

From the affidavit of Lt. Col Sudhir Chauhan filed in the court today and the perusal of the minutes of the meeting held on 28th April, 2006 (copy annexed as Annexure A-1 with this affidavit) and from the perusal of affidavit filed by Mr Ashok Thakur, Principal Secretary (LAC), Government of Himachal Pradesh, we find that the parties are far from entering into any amicable settlement between themselves. So far we have been giving them enough time for entering into such a settlement obviating intervention by this Court but we feel that the parties are not conducting themselves in spirit of give and take as well as finding a lasting solution to an issue which indeed is not very

complicated. Only as a last chance, we give the parties one more opportunity of making such an attempt. On the next date, both the parties shall file their fresh affidavits and if we find that the parties have failed to avail this last opportunity also we shall intervene in the matter directly and deal with the case on merits. List the matter on 19th May, 2006.

(V K Gupta), C J

May 9, 2006 (Deepak Gupta),J.
(D)

Civil Suit No. 4 of 2003

DW-2

Statement of Sh. Ramesh Chand s/o Sh. Giasan Ram ,presently posted in the O/O Sub Registrar, Civil Lines Zone, Delhi, Aged: 45 years.

On oath
May 10, 2006

I have brought the requisitioned register, pertaining to deaths. As per the entry No.7175 at page No.194, Smt. Satya Bhanwa died on 30.10.1998. Registration of fact of her death was done on 31.10.1998. Initially, the name of deceased was written as Satya Bhanwa. Later on a correction was made and a note was recorded in the columns No.16 to 20 that instead of Satya Bhanwa, name of deceased be read as Sushila.

xxxxx xxxxxxxx

Cross-examination by Sh. Ramakant Sharma, Advocate.

An application was moved in the year 1998, for correction of the name of the deceased. An order was passed on that application on 24th May.

RO&AC (Surjit Singh),J.
May 10, 2006
(D)

Civil Suit No.4 of 2003

DW-3

Statement of Sh. Ishwar Singh son of late Sh. Rajbal Singh, r/o MRO Tirath Ram Shah Hospital, Delhi, Aged: 48 years.

On oath
May 10, 2006

There is no entry in the requisitioned register, regarding the admission of any patient by name of Satya Bhanwa on 30.10.1998 and her death on the same date.

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Nil. (Opportunity given)

R O & A C (Surjit Singh),J.
May 10, 2006
(D)

DW-4.

Statement of Sh. N D Thakur, No.31, Investigating Officer, Police Station East, Shimla. Aged: 38 years.

On oath
May 10, 2006

I have brought the requisitioned register of FIRs No.51 of 2001 and 177 of 2004. Exts.DW-4/A and DW-4/B are the photo copies of the same, which are registered at Police Station, Chotta, Shimla.

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The challans were filed in the courts in respect of both these FIRS, which are still pending in the courts.

R O & A C (Surjit Singh),J.
May 10, 2006
(D)

Civil Suit No.4 of 2003

DW-5

Statement of Sh. S K Sharma s/o Sh B R Sharma, presently posted as SDO (HPSEB) Khalini, Age: 43 years.

On oath
May 10, 2006

I have brought the requisitioned record. On the application of Smt. Chankri Devi, electricity connection was released to her on 8.7.1964. Name of description of the building in which the electricity connection was released, does not find in the application. Name(s) of the village is Khalini and Post Office is Chotta Shimla. I do not have personal knowledge in which premises the meter is installed. As per the record brought by me, electricity connection is continuing in the name of Chankri Devi, till date.

In the year 1988, an application was moved for replacement of the meter by Sh. Keshav Verma, as old meter was stated to have got burnt. As per our record, the meter was changed in Rakesh Cottage, Khalini, Shimla.

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The record which I have brought consists of a file, which contains few papers and are un-numbered. Affidavit, in support of the averments made in the application, is not there.

R.O & A C (Surjit Singh),J.
May 10, 2006

10.5.2006 Present: Mr Ramakant Sharma, Advocate, for the plaintiff.

Mr P C Sharma, Advocate, for the Defendants.

Witnesses, namely, Keshav Ram, Health Officer, Incharge, Tirath Ram Hospital, Gulab Singh, Padam Chand, Incharge Police Station, Chotta Shimla, G D Verma, Y P Sood, Advocates and Clerk Incharge HPSEB, are present.

Defendant and four present witnesses examined. Two of them, namely, G D Verma and Y P Sood, Advocates, have been given up. Two others, namely, Gulab Singh and Padam Chand are discharged for today, as the original documents, copies whereof which are sought to be proved through them, have not been requisitioned from the lower court stationed at Shimla, where those documents are stated to have been filed in a case. Let these two witnesses be summoned afresh, for a date to be fixed by the concerned Registrar. Records from the lower court at Shimla, in which the original documents stated to be available, shall also be summoned through the concerned Ahlmad for the same date and for summoning the Ahlmad and record PF etc. shall be filed by the defendants.

May 10, 2006 (Surjit Singh),J.
(D)